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BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)
Brad.Brian@mto.com
LUIS LI (CA Bar No. 156081, *pro hac vice*)
Luis.Li@mto.com
TRUC T. DO (CA Bar No. 191845, *pro hac vice*)
Truc.Do@mto.com
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100

THOMAS K. KELLY (AZ Bar No. 012025)
tskelly@kellydefense.com
425 E. Gurley
Prescott, Arizona 86301
Telephone: (928) 445-5484

Attorneys for Defendant JAMES ARTHUR RAY

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

 Plaintiff,

 vs.

JAMES ARTHUR RAY,

 Defendant.

CASE NO. V1300CR201080049

**DEFENDANT JAMES ARTHUR RAY'S
RESPONSE TO STATE'S MOTION IN
LIMINE RE: PRETRIAL ISSUES**

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I. INTRODUCTION

The State has moved *in limine* to preclude evidence of five disparate categories of information: (A) the manner in which Mr. Ray was walked into the Verde Jail facility; (B) the bail amount; (C) the pre-indictment meeting between the prosecutors, law enforcement and the medical examiners; (D) Mr. Ray's potential sentence; and (E) personal information that certain witnesses revealed during the 2009 Spiritual Warrior retreat. The Defense does not, nor has it ever intended to introduce evidence from categories (A), (B), and (D), and would have so advised the State if asked.

The closed meeting between the prosecution and the medical examiners, however, is plainly relevant. Evidence regarding this meeting—which the medical examiners themselves characterized as an unprecedented invasion into their independence, *see* Reply ISO Motion to Compel at 1—goes directly to the credibility of the State’s expert witnesses and the medical opinions to which they will testify at trial. Arizona law permits wide-ranging inquiry into the sources and possible biases of testifying experts. *See Ariz. Indep. Redistricting Comm’n v. Fields*, 206 Ariz. 130, 143 (App.2003) (“Arizona has a long-favored practice of allowing full cross-examination of expert witnesses, including inquiry about the expert’s sources, relations with the hiring party and counsel, possible bias, and prior opinions.”). The State’s long-running attempt to conceal this meeting, first from the defense and now from the jury, must fail.

Finally, the defense is sensitive to the privacy of all witnesses, and would prefer not to inquire into the personal information of any witness. Presently, the defense does not plan to introduce evidence of any witness's history of personal trauma. However, it has been the State's strategy throughout this litigation to cast Mr. Ray as a charlatan whose work lacks legitimacy. Just recently, the State noticed its intent to call a purported expert on "cults" and "cult deprogramming." Given the State's persistent threat to try Mr. Ray's character rather than the facts, Mr. Ray cannot be precluded from properly responding with evidence that he provided valued assistance to individuals grappling with personal difficulties. The State could elect to *not* open this door. But at this juncture, Mr. Ray's hands should not be tied until the Court can

1 assess what doors the State has opened with its evidence at trial.

2 **II. THE MEETING BETWEEN PROSECUTION, LAW ENFORCEMENT, AND**
3 **THE MEDICAL EXAMINERS**

4 Ordered by the Court, the State has now produced the 60-page Power Point presentation
5 it used to “help” the medical examiners reach their opinions and conclusions on the cause of
6 death. Although the State submits to this Court that the gathering was a “charging decision
7 meeting,” *see* State’s Response to Motion to Compel at 7, the various medical examiners and law
8 enforcement officials in attendance have stated that the purpose of the meeting was to reach
9 agreement as to the cause of death. *See* Motion to Compel at 8–9.

10 On September 20, 2010, the Court ordered the State to disclose information about the
11 meeting and imposed sanctions on the State for its violation of discovery rules.

12 The very nature of the State’s meeting with its expert witnesses raises serious questions
13 regarding the independence and integrity of the medical opinions. Prior to the meeting, the
14 medical examiners were divided as to the cause of death. *See* Motion to Compel at 8–9. Only
15 after the meeting, nearly four months after the autopsies, did the medical examiners issue their
16 autopsy reports. Furthermore, members of the prosecution team subsequently ordered the
17 medical examiners not to answer questions regarding the meeting. As Chief Medical Examiner
18 Dr. Fischione explained, never in his 18 years in the profession had the prosecution so
19 encroached on medical examiners’ domain. *See* Reply ISO Motion to Compel at 1.

20 The State’s potential bias and influence in the medical examiners’ determinations is
21 precisely the sort of issue on which Arizona law encourages expansive cross-examination.
22 Indeed, “Arizona authorities consistently have supported free-ranging, skeptical cross-
23 examination of expert witnesses and open discovery to probe the groundwork for their opinions.”
24 *Emergency Care Dynamics, Ltd. v. Superior Court*, 188 Ariz. 32, 35-37 (App.1997); *see also*
25 *Ariz. Indep. Redistricting Comm’n*, 206 Ariz. at 143; *Vegodsky v. City of Tucson*, 1 Ariz. App.
26 102, 107 (1965) (“Ordinarily, it is proper on cross-examination to bring forth prior connections
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1 between the witness and a party in order to show bias.”).¹ The provision of an expert opinion
2 “invites investigation into the extent of his knowledge, the reasons for his opinion including facts
3 and other matters upon which it is based and which he took into consideration.” *State v.*
4 *Swafford*, 21 Ariz. App. 474, 486 (1974). An expert “may be subjected to the most rigid cross-
5 examination concerning . . . his opinion and its sources.” *Id.*

6 **III. PERSONAL INFORMATION OF WITNESSES**

7 Part of JRI’s mission of self-improvement is to assist individuals who have suffered
8 traumatic experiences or other personal difficulties. Numerous witnesses have testified that JRI
9 programs have helped them overcome specific difficulties. Mr. Ray is committed to the privacy
10 of JRI participants, and the Defense is sensitive to the need to avoid any unnecessary disclosure
11 of witnesses’ personal information. Accordingly, the Defense does not plan at this time to
12 introduce evidence regarding participants’ past traumas or other private information.

13 In various pretrial submissions, however, the State has indicated that it may attempt to
14 depict Mr. Ray as a charlatan whose self-improvement programs are devoid of legitimacy. If the
15 State chooses to attack Mr. Ray’s character in this way, the Defense reserves the right to respond
16 with evidence that Mr. Ray has helped numerous individuals overcome debilitating problems.
17 This defense could involve information that the State’s Motion seeks to exclude.

18 In such a situation, where the State has first demeaned Mr. Ray and misrepresented the
19 nature of his work, admission of witnesses’ prior personal difficulties would be proper. This
20 would be entirely distinct from the usual case in which courts limit evidence related to witnesses:
21 where a party tries to introduce embarrassing information as part of an overbroad attack on a
22 witness’s credibility. *Cf. State v. Zuck* 134 Ariz. 509, 513 (1982) (proponent of evidence of a
23 witness’s psychiatric history must show how it affects the witness’s ability to observe and relate
24 the matters to which he testifies). Here, in contrast, the evidence would go directly to disputed
25 factual and character evidence introduced by the State in its case-in-chief. The probative value
26 of the evidence of witnesses’ personal backgrounds would not be “substantially outweighed by

27 ¹ Of course, Mr. Ray has no intention of “making any *improper* comments or characterizations relating to the
28 meeting.” State’s Motion in Limine Re: Pretrial Issues at 6 (emphasis added). The Defense will comply in full with
all applicable rules of evidence and procedure.

1 the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by
2 considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”
3 Ariz. Rule of Evidence 403. Nor would the evidence impose on witnesses “harassment or undue
4 embarrassment.” Ariz. Rule of Evidence 611. In any event, the Defense has no plan at present
5 to introduce such information, and encourages the State to refrain from engaging in baseless
6 attacks on the character of Mr. Ray and JRI programs.
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10 DATED: November 8, 2010

MUNGER, TOLLES & OLSON LLP
BRAD D. BRIAN
LUIS LI
TRUC T. DO

13 THOMAS K. KELLY

14 By 
15 _____

16 Attorneys for Defendant James Arthur Ray

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19 Copy of the forgoing mailed/faxed/
20 delivered this 8 day of November, 2010, to:

21 Sheila Polk
22 Yavapai County Attorney
23 255 E. Gurley
24 Prescott, Arizona 86301

25 By 
26 _____
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